

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DENNIS SUDBERRY,
Plaintiff,
v.
ISIDRO BACA, et al.,
Defendants.

3:15-cv-00402-RCJ-WGC

I. DISCUSSION

On February 12, 2016, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 5 at 6). Forty-eight days later, the Court dismissed the case after Plaintiff failed to file an amended complaint. (ECF No. 9). Plaintiff filed two notices - a “Clarification on Cases” (ECF No. 7) and a motion for clarification of cases (ECF No. 8) - in the intervening period. The Court found those two filings unresponsive to the screening order filed by the Court. (See ECF No. 9 at 1:23-24). Plaintiff’s notices did not make any indication that Plaintiff had received the screening order.

Following the dismissal, on April 4, 2016, Plaintiff filed a notice of appeal, wherein he alleges he did not receive the Court's initial screening order. (ECF No. 11 at 4). The Ninth Circuit issued an order on April 13, 2016, noting that Plaintiff's April 4, 2016 filing appears to request that the district court reconsider its February 12, 2016 order. (ECF No. 13 at 1). The

1 Ninth Circuit determined that it should hold any further appellate consideration in abeyance
2 pending the district court's consideration of whether Plaintiff's April 4, 2016 filing constitutes
3 one of the motions listed in Federal Rule of Appellate Procedure 4(a)(4), and, if so, whether
4 the motion should be granted or denied. (*Id.* at 1-2 (citing Fed. R. App. P. 4(a)(4); *Leader*
5 *Nat'l Ins. Co. v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994)).

6 Federal Rule of Appellate Procedure 4(a)(4) states, in part, that if a party timely files
7 "any of the following motions under the Federal Rules of Civil Procedure, the time to file an
8 appeal runs for all parties from the entry of the order disposing of the last such remaining
9 motion: . . . (iv) to alter or amend the judgment under Rule 59." Fed. R. App. P. 4(a)(4). The
10 Court finds that Plaintiff's April 4, 2016 filing should be considered a motion to alter or amend
11 the judgment pursuant to Federal Rule of Civil Procedure 59. Furthermore, the Court shall
12 grant Plaintiff's motion, vacate the order dismissing the complaint, provide him with a copy of
13 the Court's initial screening order, and permit him thirty days to file his amended complaint.
14 Should Plaintiff fail to file an amended complaint within thirty days, however, the Court shall
15 dismiss this action with prejudice.

16 **II. CONCLUSION**

17 It is therefore ordered that the Court hereby grants Plaintiff's motion to extend time,
18 which is construed as a motion to alter or amend the judgment. (ECF No. 11).

19 It is further ordered that the Court's March 31, 2016 order dismissing this case is
20 VACATED.

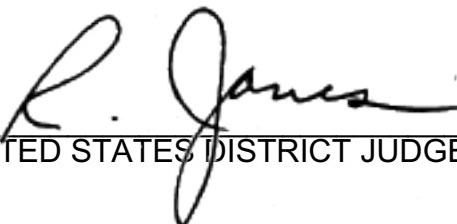
21 It is further ordered that if Plaintiff chooses to file an amended complaint curing the
22 deficiencies of his complaint, as outlined in the Court's initial screening order, Plaintiff shall
23 file the amended complaint within thirty (30) days from the date of entry of this order.

24 It is further ordered that the Clerk of Court shall send to Plaintiff a copy of the Court's
25 initial screening order (ECF No. 5), the approved form for filing a § 1983 complaint,
26 instructions for the same, and a copy of his original complaint (ECF No. 6). If Plaintiff chooses
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1 to file an amended complaint, he must use the approved form and he shall write the words
2 "First Amended" above the words "Civil Rights Complaint" in the caption.

3 It is further ordered that if Plaintiff does not timely file an amended complaint curing the
4 deficiencies of the complaint, this action shall be dismissed with prejudice.

5 DATED: This 21st day of April, 2016.

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8 
UNITED STATES DISTRICT JUDGE

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